

HOUSE BILL 622

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HB 166/00 - JUD

2001 Regular Session
11r0206
CF 11r0836

By: **Delegates Cadden, Owings, Amedori, W. Baker, Baldwin, Boschert, Boutin, Bozman, Branch, Brinkley, Clagett, Conway, Cryor, D'Amato, Dewberry, Eckardt, Edwards, Flanagan, Fulton, Glassman, Greenip, Guns, Hammen, Hecht, Hubers, Hutchins, James, Kach, K. Kelly, Kittleman, Klausmeier, Klima, La Vay, Leopold, Linton, Malone, McClenahan, McHale, McKee, Minnick, Mitchell, Mohorovic, O'Donnell, Owings, Parrott, Ports, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Shank, Sophocleus, Stern, Stocksdale, Walkup, Weir, Wood, Bartlett, Elliott, Getty, Stull, and DeCarlo**

Introduced and read first time: February 7, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

3 FOR the purpose of making it a felony to possess and intend to use a firearm, display
4 a firearm in a threatening manner, or attempt to use a firearm on school
5 property; requiring that a person convicted of a certain felony be subject to a
6 certain penalty; altering certain criminal penalties for a person who is convicted
7 of possessing a regulated firearm after having been previously convicted of a
8 crime of violence or felony; prohibiting a District Court commissioner from
9 authorizing the pretrial release of a defendant charged with a certain crime;
10 requiring a judge to consider as a rebuttable presumption that a defendant
11 charged with a certain crime will flee and pose a danger to another person or the
12 community; allowing the court or District Court commissioner to consider
13 including certain requirements as conditions of pretrial release; allowing the
14 State to appeal from a certain decision of the District Court or to apply to the
15 Court of Special Appeals for leave to appeal an order of the circuit court setting
16 the amount and conditions of bail claimed to be insufficient before trial or after
17 conviction; and generally relating to the penalties and conditions for pretrial
18 release for certain firearms offenses.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 36A
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 2000 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article 27 - Crimes and Punishments

1 Section 281A(b) and 445(d)(1)
2 Annotated Code of Maryland
3 (1996 Replacement Volume and 2000 Supplement)

4 BY repealing
5 Article 27 - Crimes and Punishments
6 Section 449(e)
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 2000 Supplement)

9 BY adding to
10 Article 27 - Crimes and Punishments
11 Section 449(e)
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 2000 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Criminal Procedure
16 Section 5-202(c)
17 Annotated Code of Maryland
18 (As enacted by Chapter _____ (S.B. _____/H.B. _____) (1lr0739) of the Acts of the
19 General Assembly of 2001)

20 BY repealing and reenacting, with amendments,
21 Article - Courts and Judicial Proceedings
22 Section 3-707 and 12-401(b)
23 Annotated Code of Maryland
24 (1998 Replacement Volume and 2000 Supplement)

25 Preamble

26 WHEREAS, Project Exile is a legislative initiative designed to make gun
27 carrying criminals face immediate prosecution, stiff mandatory prison sentences, and
28 reduced opportunities for prison release -- in effect to "exile" criminals to prison for
29 at least 5 years; and

30 WHEREAS, The goal of Project Exile is to reduce the incidence of gun violence
31 and the firearm "carry rate" -- the frequency with which persons arrested for felonies
32 are found to be carrying firearms; and

33 WHEREAS, "Project Exile" has proven to be a highly successful program
34 operating in Richmond, Virginia, involving federal, state, and local law enforcement
35 agencies, resulting in greatly reduced homicide, armed robbery, and carry rates; and

36 WHEREAS, It would benefit the residents of Maryland to design a Project Exile
37 program for this State; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article 27 - Crimes and Punishments**

4 36A.

5 (a) [No person, unless otherwise excepted in this section, shall] EXCEPT AS
6 PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON:

7 (1) MAY NOT carry or possess any rifle, gun, knife, or deadly weapon of
8 any kind on any public school property in this State; OR

9 (2) ON PUBLIC SCHOOL PROPERTY, MAY NOT POSSESS AND INTEND TO
10 USE A FIREARM, DISPLAY A FIREARM IN A THREATENING MANNER, OR ATTEMPT TO
11 USE A FIREARM.

12 (b) Nothing in this section shall be construed to apply to:

13 (1) Law enforcement officers in the regular course of their duty;

14 (2) Persons hired by the boards of education in the counties and
15 Baltimore City specifically for the purpose of guarding public school property;

16 (3) Persons engaged in organized shooting activity for educational
17 purposes; or

18 (4) Persons who, with a written invitation from the school principal,
19 display or engage in historical demonstrations using weapons or replicas of weapons
20 for educational purposes.

21 (c) (1) [Any] A person who violates SUBSECTION (A)(1) OF this section [shall
22 be] IS guilty of a misdemeanor and on conviction [shall be sentenced] IS SUBJECT to
23 [pay] a fine of no more than \$1,000 or [shall be sentenced to the Maryland
24 Department of Correction for a period] IMPRISONMENT of not more than 3 years. Any
25 such person who shall be found to carry a handgun in violation of this section, shall be
26 sentenced as provided in § 36B of this article.

27 (2) (I) A PERSON WHO VIOLATES SUBSECTION (A)(2) OF THIS SECTION
28 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT
29 LESS THAN 5 YEARS OR MORE THAN 20 YEARS.

30 (II) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
31 THE MINIMUM SENTENCE OF 5 YEARS.

32 (III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
33 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

1 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
2 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
3 LESS THAN 5 YEARS.

4 281A.

5 (b) During and in relation to any drug trafficking crime, a person who
6 possesses a firearm under sufficient circumstances to constitute a nexus to the drug
7 trafficking crime or who uses, wears, carries, or transports a firearm is guilty of a
8 separate felony and on conviction shall, in addition to the sentence provided for the
9 drug trafficking crime, be sentenced as follows:

10 (1) (i) For a first offense, for a term of not less than 5 nor more than 20
11 years.

12 (ii) It is mandatory upon the court to impose no less than the
13 minimum sentence of 5 years, no part of which may be suspended and the person may
14 not be eligible for parole except in accordance with the provisions of § 4-305 of the
15 Correctional Services Article; and

16 (2) (i) For a second or subsequent offense, for a term of not less than
17 10 nor more than 20 years.

18 (ii) It is mandatory upon the court to impose no less than a
19 minimum consecutive sentence of 10 years, no part of which may be suspended and
20 the person may not be eligible for parole except in accordance with the provisions of §
21 4-305 of the Correctional Services Article.

22 (iii) The sentence shall be served consecutively and not concurrently
23 to any other sentence imposed by virtue of the commission of the drug trafficking
24 crime.

25 445.

26 (d) A person may not possess a regulated firearm if the person:

27 (1) Has been convicted of:

28 (i) A crime of violence;

29 (ii) Any violation classified as a felony in this State;

30 (iii) Any violation classified as a misdemeanor in this State that
31 carries a statutory penalty of more than 2 years; or

32 (iv) Any violation classified as a common law offense where the
33 person received a term of imprisonment of more than 2 years.

1 449.

2 [(e) A person who was previously convicted of a crime of violence as defined in
3 § 441(e) of this article or convicted of a violation of § 286 or § 286A of this article, and
4 who is in illegal possession of a firearm as defined in § 445(d)(1)(i) and (ii) of this
5 article, is guilty of a felony and upon conviction shall be imprisoned for not less than
6 5 years, no part of which may be suspended and the person may not be eligible for
7 parole. Each violation shall be considered a separate offense.]

8 (E) (1) (I) A PERSON WHO VIOLATES § 445(D)(1)(I) OF THIS SUBHEADING IS
9 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT
10 LESS THAN 5 YEARS OR MORE THAN 20 YEARS.

11 (II) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
12 THE MINIMUM SENTENCE OF 5 YEARS.

13 (III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
14 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

15 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
16 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
17 LESS THAN 5 YEARS.

18 (2) (I) A PERSON WHO VIOLATES § 445(D)(1)(II) OF THIS SUBHEADING IS
19 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT
20 OF NOT LESS THAN 2 YEARS OR MORE THAN 10 YEARS.

21 (II) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
22 THE MINIMUM SENTENCE OF 2 YEARS.

23 (III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
24 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

25 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
26 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
27 LESS THAN 2 YEARS.

28 **Article - Criminal Procedure**

29 5-202.

30 (c) (1) A District Court commissioner may not authorize the pretrial release
31 of a defendant charged with a crime of violence [if the defendant has been previously
32 convicted:

33 (i) in this State of a crime of violence; or

34 (ii) in any other jurisdiction of a crime that would be a crime of
35 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF
36 ARTICLE 27, § 36A, § 281A(B), OR § 445(D) OF THE CODE.

1 (2) (i) A judge may authorize the pretrial release of a defendant
2 described in paragraph (1) of this subsection on:

3 1. suitable bail;

4 2. any other conditions that will reasonably ensure that the
5 defendant will not flee or pose a danger to another person or the community; or

6 3. both bail and other conditions described under item 2 of
7 this subparagraph.

8 (ii) When a defendant described in paragraph (1) of this subsection
9 is presented to the court under Maryland Rule 4-216(g), the judge shall order the
10 continued detention of the defendant if the judge determines that neither suitable
11 bail nor any condition or combination of conditions will reasonably ensure that the
12 defendant will not flee or pose a danger to another person or the community before
13 the trial.

14 (3) There is a rebuttable presumption that a defendant described in
15 paragraph (1) of this subsection will flee and pose a danger to another person or the
16 community.

17 (4) IN ADDITION TO THE CONDITIONS OF PRETRIAL RELEASE SPECIFIED
18 ELSEWHERE IN THIS SECTION, THE COURT OR DISTRICT COURT COMMISSIONER MAY
19 CONSIDER INCLUDING AS A CONDITION OF PRETRIAL RELEASE A REQUIREMENT
20 THAT THE DEFENDANT:

21 (I) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
22 EMPLOYMENT;

23 (II) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

24 (III) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME
25 AND WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;

26 (IV) COMPLY WITH A SPECIFIED CURFEW;

27 (V) REFRAIN FROM POSSESSING A FIREARM, DESTRUCTIVE
28 DEVICE, OR OTHER DANGEROUS WEAPON;

29 (VI) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED
30 DANGEROUS SUBSTANCES; OR

31 (VII) SUBMIT TO DRUG OR ALCOHOL TESTING UNTIL THE
32 DISPOSITION OF THE DEFENDANT'S CASE.

Article - Courts and Judicial Proceedings

2 3-707.

3 (a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of
4 determining the right to bail, or if a judge sets bail claimed to be excessive prior to
5 trial or after conviction, but prior to final judgment, a petitioner may apply to the
6 Court of Special Appeals for leave to appeal from the refusal.

7 (b) (1) A petitioner shall file the application for leave to appeal within ten
8 days after the denial or grant of habeas corpus relief stating briefly why the order of
9 the lower court should be reversed or modified.

10 (2) The record on the application for leave to appeal shall contain a copy
11 of the petition for habeas corpus, the State's answer, if any, the order of the court, and
12 the memorandum of reasons issued by the judge.

13 (3) If the Court grants the application, it may order the preparation of a
14 transcript of any proceedings related to the habeas corpus petition.

15 (c) (1) The Court of Special Appeals may grant or deny the application for
16 leave to appeal. If the Court grants the application, it may affirm, reverse, or modify
17 the order of the lower court granting or denying the relief sought by the writ.

18 (2) If the Court determines that the lower court was wrong in refusing to
19 admit to bail or that the bail set is not appropriate, it may determine the proper
20 amount of bail. This determination is binding on the lower court, unless a change of
21 circumstances warrants a different decision.

22 (D) THE STATE MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE
23 TO APPEAL AN ORDER OF THE CIRCUIT COURT SETTING THE AMOUNT AND
24 CONDITIONS OF BAIL CLAIMED TO BE INSUFFICIENT BEFORE TRIAL OR AFTER
25 CONVICTION.

26 12-401.

27 (b) In a criminal case:

28 (1) The State may appeal from [a]:

29 (I) A DECISION OF THE DISTRICT COURT SETTING THE AMOUNT
30 AND CONDITIONS OF BAIL; OR

31 (II) A final judgment entered in the District Court:

32 [(i)] 1. If the State alleges that the trial judge failed to impose the
33 sentence specifically mandated by the Code; or

34 [(ii)] 2. Granting a motion to dismiss, or quashing or dismissing a
35 charging document.

1 (2) The defendant may appeal even from a final judgment entered in the
2 District Court though imposition or execution of sentence has been suspended.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.